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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COLLIN HOWARD,

Defendant.

Case No.: CR 19-00075 EJD

SENTENCING MEMORANDUM

Court: Courtroom 4, 5th Floor

Hearing Date: October 3, 2022

Hearing Time: 1:30 p.m.

DEFENDANT'S SENTENCING MEMORANDUM

Defendant Collin Howard submits the following memorandum in support of his request for a sentence Time-Served and three years of Supervised Release. This sentence is a variance from the United States Sentencing Guidelines, and lower than Probation's Sentencing Recommendation. However, as set forth in this Memorandum, the requested sentence is "sufficient, but not greater than necessary" to achieve the purposes of sentencing that are set forth in 18 U.S.C § 3553.

I. PLEA AND ADVISORY GUIDELINE RANGE

Mr. Howard was convicted on his pleas of guilty to Counts One through Four, which charged Distribution and Possession with Intent to Distribute Cocaine, 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); Distribution and Possession with Intent to Distribute Methamphetamine, 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); Distribution and Possession with Intent to Distribute Methamphetamine 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii); and Possession with Intent to Distribute Methamphetamine, 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), respectively. (PSR at pp.1-2). These charges arose from narcotics transactions that Mr. Howard conducted with undercover federal agents when he was 18 years-old and a freshman at U.C. Santa Cruz.

Mr. Howard does not dispute the Offense and Criminal History Levels, as determined by Probation, nor the facts underlying the offense, as set forth in the Presentence Investigation Report (“PSR”); however, for reasons set forth below, does the defense request that the Court sentence Mr. Howard to a Sentence of Time-Served, with a period of home confinement and other fitting conditions, such as community service. Mr. Howard respectfully asserts that there are significant circumstances underlying the conviction which justify a substantial downward variance and mitigated sentence, pursuant to 18 U.S.C. § 3553(a).

II. FACTUAL BACKGROUND

Mr. Howard is 22 years-old. At the time he committed the instant offense, he was a teenager, who had just turned 18. He had been emotionally isolated from his family for years, and he did not know how to cope with the pain that this emotional abandonment caused him. (PSR ¶ 19) His relationship with his parents was “surface-level,” and he did not get the support he needed to cope with the emotions he felt. (PSR ¶¶ 43, 48-49) He turned to heavy drinking to numb these feelings, but this

1 did not help. Mr. Howard attempted suicide on June 1, 2018, just about a month before his 18th
 2 birthday, by planning to drive his parents' car off a cliff. (Exhibit to be separately filed under seal)

3 It was this troubled teenager who created the "Banana Plug" App. This App was first noticed
 4 on October 28, 2018, by UCSC Resident Assistants, who contacted law enforcement. (PSR ¶ 8-9) Mr.
 5 Howard had hung posters around the campus that advertised the illegal drugs and alcohol that were
 6 attainable via the App.
 7

8 Mr. Howard was not hard to apprehend. Officers downloaded the App and contacted Mr.
 9 Howard the next day. Mr. Howard sold drugs to law enforcement on three occasions before he was
 10 arrested on November 28, 2018. This brazen enterprise is highly indicative of how self-destructive and
 11 hopeless Mr. Howard felt during that time.
 12

13 Since that time, Mr. Howard has made impressive strides. He has been sober for over three
 14 years, (PSR ¶ 54) he has enrolled himself in Santa Rosa Community college, with the goal of
 15 transferring to a University of California or a Cal State university in the fall of 2023. (Exhibit A) He is
 16 self-sufficient, working full-time, and he has a stable home. Most importantly, he is taking care of his
 17 health by exercising and reading books pertaining to mental health, so that he can do all he can to stay
 18 healthy. When Pretrial's contracted provider shut down, he took the initiative to find an affordable
 19 online mental health provider, and he continues his mental health treatment twice a month. (PSR ¶ 48)
 20

21 Perhaps the most important aspect of his rehabilitation is the community that he has built with
 22 others. As the Letters in Support make clear, Mr. Howard has a supportive and positive community,
 23 and he is forming relationships with people who care about him and are superb role models.
 24 Additionally, he is invested in his community and proud that he can share his computer skills to help
 25 others. (Exhibits B – H)

26 **III. A SENTENCE OF TIME-SERVED, WITH A PERIOD OF HOME**
 27 **CONFINEMENT, IS ADEQUATE TO SATISFY THE GOALS OF 18 U.S.C. § 3553(a)**
 28

1 In this case, Mr. Howard has clearly accepted responsibility. 18 U.S.C. § 3553(a) factors
 2 clearly indicate that a substantial variance from the guidelines is appropriate. Mr. Howard should
 3 receive a sentence of Time-Served, three years of Supervised Release, with a period of home
 4 confinement.

5
 6 The Sentencing Reform Act, which, as mandated by *United States v. Booker*, 543 U.S. 220
 7 (2005), now guides federal judges in their selection of a sentence, and directs the courts to “impose a
 8 sentence sufficient, but not greater than necessary, to comply with the purposes set forth in Paragraph
 9 (2)”

10 (2) the need for the sentence imposed -

11 (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just
 12 punishment for the offense;

13 (B) to afford adequate deterrence to criminal conduct;

14 (C) to protect the public from further crimes of the defendant; and

15 (D) to provide the defendant with needed educational or vocational training, medical care, or
 16 other correctional treatment in the most effective manner.” *See* 18 U.S.C. § 3553(a)(2).

17
 18 Section 3553(a) further directs sentencing courts to consider (1) the nature and circumstances
 19 of the offense and the history and characteristics of the defendant; (3) the kinds of sentences available;
 20 (4) the kinds of sentences and the sentencing range established for the offense under the Guidelines;
 21 (5) any pertinent policy statements issued by the Sentencing Commission; (6) the need to avoid
 22 unwanted sentencing disparities among defendants with similar records who have been found guilty of
 23 similar conduct; and (7) the need to provide restitution to any victims of the offense. Thus, the
 24 Guidelines range for the offense is but one of ten factors specified under the Sentencing Act.

25
 26 Section 3553(a)(1) is a “broad command to consider ‘the nature and circumstances of the
 27 offense and the history and characteristics of the defendant.’” *Gall v. U.S.*, 552 U.S. 38, 49 n.6 (2007).
 28

1 The *Gall* Court, which considered a case that is factually similar to Mr. Howard's case, considered the
 2 defendant's rehabilitation, community connections, lack of further criminal activity, and efforts to
 3 better himself when affirming a sentence that was a non-custodial, substantial variance from the
 4 Guidelines. There, the lower court found that "imprisonment would be counter effective by depriving
 5 society of the contributions of the Defendant, who, the Court has found, understands the consequences
 6 of his criminal conduct and is doing everything in his new power to forge a new life." *Id.* at 44.

8 In this matter, it is clear that Mr. Howard was a short-term drug dealer, whose impetus was
 9 self-harm. Mr. Howard had no prior criminal history, (PSR ¶ 35) and no dangerous weapons. He had
 10 not been on law-enforcement's radar, because this conduct was an extreme aberration from his usual
 11 law-abiding conduct. His alcohol addiction and mental health drove the decisions that resulted in the
 12 crime to which he has pled guilty. Since that time, he has rehabilitated completely.

14 Similar to *Gall*, this Court should give considerable credit to defendant's post-arrest
 15 rehabilitation, strong community support, and significant efforts to engage in activities that prevent
 16 recidivism. Additionally, no goals of sentencing would be furthered by the incarceration of Mr.
 17 Howard. Mr. Howard has performed well on pretrial release, by setting goals, working, obtaining a
 18 job, and engaging in counseling. Mr. Howard and the public will benefit from Mr. Howard's
 19 continued supervision, where he can continue to engage in mental health counseling and substance
 20 abuse counseling.

22 **IV. COLLIN HOWARD'S YOUTH IS A SIGNIFICANT MITIGATING FACTOR.**

23 The crime at issue here appears to be an impetuous crime. A clear mitigating factor in this case
 24 is defendant's age and immaturity, which are exacerbated by lack of guidance and support during his
 25 adolescent years.

26 Courts universally recognize that youthful offenders are less culpable than mature offenders:
 27
 28

1 The Commission has not developed any standards or recommendations that affect
 2 sentencing ranges for many individual characteristics. Matters such as age, education,
 3 mental or emotional condition, medical condition (including drug or alcohol addiction),
 4 employment history, lack of guidance as a youth, family ties, or military, civic,
 5 charitable, or public service are not ordinarily considered under the Guidelines. These
 are, however, matters that § 3553(a) authorizes the sentencing judge to consider. *See*,
e.g., 18 U.S.C. § 3553(a)(1). As such, they are factors that an appellate court must
 consider under *Booker's* abuse-of-discretion standard.

6 *Rita v. United States*, 551 U.S. 338, 364-65 (2007). “Immaturity at the time of the offense conduct is
 7 not an inconsequential consideration. Recent studies on the development of the human brain conclude
 8 that human brain development may not become complete until the age of twenty-five . . . [T]he recent
 9 [NIH] report confirms that there is no bold line demarcating at what age a person reaches full maturity.
 10 While age does not excuse behavior, a sentencing court should account for age when inquiring into the
 11 conduct of the defendant.” *See Gall*, 552 U.S. 58 (quoting sentencing court). “Today our society views
 12 juveniles, in the words *Atkins* used respecting the mentally retarded, as categorically less culpable than
 13 the average criminal. . . . A lack of maturity and an underdeveloped sense of responsibility are found in
 14 youth more often than in adults and are more understandable among the young. These qualities often
 15 result in impetuous and ill-considered actions and decisions. . . . The susceptibility of juveniles to
 16 immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible
 17 as that of an adult The relevance of youth as a mitigating factor derives from the fact that the
 18 signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness
 that may dominate in younger years can subside.” *Roper v. Simmons*, 543 U.S. 551, 567 (2005).

19 Here, Mr. Howard was only 18 years-old when he committed this offense. While he did not
 20 suffer abuse in his family, he lacked emotional support that is so important for a child’s development
 21 and his ability to make good choices. Fortunately, as Mr. Howard has advanced in life, he has positive
 22 plans for his future that he has already begun to realize. No goal of sentencing will be achieved by
 23 imprisonment. The Court should follow the *Gall* Court, grant a variance from the Guidelines, and
 24 sentence Mr. Howard to three years of Supervised Release, with a period of home confinement. This
 25 sentence will satisfy the goals of 3553(a).

26 //

27 //

28 //

CONCLUSION

Based on the above, Mr. Howard respectfully requests that this Court sentence him three years of Supervised Release, with a period of home confinement, waiver of any fine, and a Special Assessment of \$100.00 per count.

Dated: September 28, 2022

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/S

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